

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT

PHILIP T. MCGRATH and
JULIE S. MCGRATH,

Plaintiffs,

v.

No. D-202-CV-2015-05891

STATE FARM INSURANCE
COMPANY,

Defendant.

**COMPLAINT FOR BREACH OF CONTRACT, BREACH OF THE DUTY OF GOOD
FAITH AND FAIR DEALING, AND FOR BAD FAITH**

COME NOW, Plaintiffs, Philip T. McGrath and Julie S. McGrath, by and through their attorneys, B. Kay Shafer and Robert L. Cole (Cole & Shafer, P.A.), and for their Complaint, state and allege as follows:

JURISDICTION

1. Jurisdiction and venue are proper in this Court. NM Const. Art. VI, § 13; NMSA § 42-7-1.

PARTIES

2. Upon information and belief, Defendant State Farm Insurance (herein "Defendant" or "State Farm") is a mutual automobile insurance company organized in 1922 and

existing under the laws of the State of Illinois. State Farm currently conducts, and at all times material hereto, conducted business in the State of New Mexico.

3. Plaintiff Philip T. McGrath is, and at all times material hereto, was a resident of Bernalillo County, New Mexico.

4. Plaintiff Julie S. McGrath is, and at all times material hereto, was a resident of Bernalillo County, New Mexico.

FACTUAL ALLEGATIONS

5. On July 19, 2009, Plaintiffs Philip T. McGrath and Julie S. McGrath (herein collectively referred to as "Plaintiffs") were involved in a motor vehicle accident (herein "MVA") with a fully loaded 18,000 lb. tractor-trailer rig with an estimated gross weight in excess of 28,000 lbs., owned and operated by Ismael Medina doing business as Angel Express. Mr. Medina, traveling westbound on Interstate 40 at approximately 65 miles per hour, failed to see Plaintiffs' vehicle in the lane next to him when he changed lanes, causing him to strike Plaintiffs' vehicle.

6. Plaintiffs were both injured at the time of the accident. Plaintiff Julie McGrath suffered a cervical sprain and severe bruising. Plaintiff Philip McGrath suffered lumbar fractures, cervical sprain, and a concussion.

7. Plaintiffs vehicle, a Dodge Neon with an estimated gross weight of 2,391 lbs., was declared a total loss. Plaintiffs filed a claim with Mr. Medina's motor vehicle insurance carrier, Federal Motor Carriers Risk Retention Group (herein "FMC"), a Delaware corporation.

The property damage claim was paid by FMC, but before Plaintiffs could submit a demand on their personal injury claims, FMC filed for insolvency with the Delaware Insurance Commission.

8. Due to a continued lack of response by FMC to Plaintiffs' personal injury claims, on May 24, 2010, Plaintiffs filed a complaint for personal injury against Ismael Medina d/b/a Angel Express. The summons and complaint were duly served on Mr. Medina, but he failed to answer. Plaintiffs' attorney at that time, Joseph Camacho, conducted a search of Mr. Medina's assets in order to levy upon them in the event the Court granted a default judgment for Mr. Medina's failure to answer Plaintiffs' complaint. It was determined that Mr. Medina had no assets.

9. On or about September 12, 2012, Plaintiffs each filed a proof of claim with Federal Motor Carriers Risk Retention Group, Inc. in Liquidation, in care of the Delaware Rehabilitation & Liquidation Bureau. To date, Plaintiffs' claims have not been paid. Upon information and belief, no claims submitted to the Delaware Rehabilitation & Liquidation Bureau have been paid.

10. Being unable to satisfy their claims through the tortfeasor or his insurance carrier, Plaintiffs filed an uninsured motorist claim with their motor vehicle insurance carrier, State Farm.

11. At the time of the accident, Plaintiffs owned four (4) vehicles, all insured with State Farm, and all carrying uninsured/underinsured motorist limits of \$50,000, each.

COUNT I.

BREACH OF CONTRACT

12. Plaintiffs incorporate paragraphs one (1) through eleven (11) into this Count by reference as though fully set forth herein.

13. Plaintiffs McGrath bought four (4) motor vehicle policies of insurance from State Farm to insure four (4) vehicles owned by them, thus creating four (4) contracts between them. All policies were current at the time of the MVA.

14. State Farm breached these contracts when they wrongfully denied coverage under the uninsured motorists' coverage provisions, to which Plaintiff was entitled.

15. Plaintiffs were damaged by this breach, which damages shall be established according to proof at trial including, but not limited to medical expenses, bodily injury, pain and suffering, loss of wages, and loss of enjoyment of life.

COUNT II.

BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING

16. Plaintiffs incorporate paragraphs one (1) through fifteen (15) into this Count by reference as though fully set forth herein.

17. Defendant failed to evaluate and adjust Plaintiffs' claims on a timely basis, thereby violating the implied covenant of good faith and fair dealing that exist between an insurer and its policy holder(s).

18. Plaintiffs are entitled to the benefit of their bargain with State Farm. Plaintiffs purchased four insurance policies which contain the terms of the benefits payable to Plaintiffs when they are involved in an accident with an uninsured motorist.

19. Defendants have refused to provide these benefits to Plaintiffs when the tortfeasor has clearly been shown to have no insurance to compensate Plaintiffs for their damages.

20. Defendant has a duty to perform as agreed under the contract, in good faith, and to deal fairly with Plaintiffs in doing so. Defendant has breached that duty. As a direct and proximate result of that breach, Plaintiffs are being denied the benefits for which they contracted with State Farm.

21. Plaintiffs have been damaged by Defendant's breach of this duty, as will be shown according to proof at trial.

COUNT III.

BAD FAITH

22. Plaintiffs incorporate paragraphs one (1) through twenty (20) into this Count by reference as though fully set forth herein.

23. An insurance company must exercise good faith when dealing with a claim by an insured under a policy of insurance.

24. Defendant failed to do so, and acted in bad faith, when it refused to reasonably negotiate Plaintiffs' claim under their four policies.

25. Defendant failed to do so, and acted in bad faith, when it refused to acknowledge the existence of all four policies purchased by Plaintiffs, and the cumulative effect of their benefits.

WHEREFORE, Plaintiffs pray this Court grant them the following relief:

- A. A trial by a jury of their peers;
- B. Judgment against Defendants on all counts herein;
- C. Actual, consequential and punitive damages;
- D. Attorneys' fees and costs of suit;
- E. Any other relief which this Court deems just and proper.

Respectfully submitted,

COLE & SHAFER, P.A.

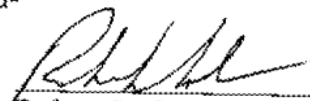
Dated: 7/17/15

By: /s/ B. Kay Shafer

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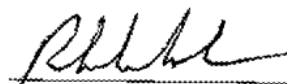
Defendant.

CERTIFICATE OF ARBITRATION

COME NOW, Plaintiffs, Philip T. McGrath and Julie S. McGrath, by and through their attorneys, B. Kay Shafer and Robert L. Cole (Cole & Shafer, P.A.), and hereby state they are seeking an amount in excess of \$25,000, exclusive of punitive damages, costs, interest and attorney's fees.

Respectfully submitted,

COLE & SHAFER, P.A.

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